

LAW OFFICES
BELL & BELL, P.C.
210 SOUTH 3RD STREET
P.O. BOX 210
HAMILTON, MT 59840

(406) 363-5040 *5064*
(406) 375-0339 FAX

KENNETH S. BELL

February 24, 2009

RECEIVED

FEB 24 2009

Ravalli County Commissioners

--	--	--	--	--

*Planning rec'd
hand delivered
copy on 2/24/09
qw.*

✓ Ravalli County Commissioners
County Administration Building
215 South 4th Street - Suite A
Hamilton, MT 59840

Ravalli County Planning Department
County Administration Building
215 South 4th Street - Suite F
Hamilton, MT 59840

RE: Subdivision Exemption for Court-ordered split
Estate of Penn H. Holsapple (Probate No. DP 08-36)
Dorothy Jane Holsapple Credit Trust U/W/D December 9, 1993
(Probate No. DP 99-15)

Commissioners and Planning Department:

I have submitted to both the Commissioners and the Planning Department copies of all documents filed with the District Court in relation to a request for a court-ordered split of "an 80-acre parcel into two 40's" (actual acreage is 78.59 acres into 39.30 and 39.29 acre parcels). Included are copies of our Motion with proposed plat and Verified Affidavit and a Brief. The original of the Planning Department's Subdivision Exemption Application and the \$200.00 check was, of course, submitted to the Planning Department. The originals of the other documents have been filed with the District Court.

I have attempted to address all of the requests for information in the applicable parts of the Subdivision Exemption Application in the Verified Affidavit attached to the District Court Motion. We will be happy to address anything we may have inadvertently missed at the public hearing.

February 24, 2009

Page 2

I respectfully request that the public hearing be set during one of the last two full weeks of March. I have to undergo the placement of the third in a series of carotid artery stents sometime during the first two weeks of March, and Haven Holsapple, who will be appearing with me at the public hearing, will be in Wyoming for several weeks beginning April 1, 2009.

If you have questions of me, please do not hesitate to call me at 363-5064 at work or 363-6513 at home.

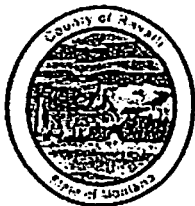
Sincerely,

A handwritten signature in blue ink that reads "Ken Bell". The signature is written in a cursive, flowing style.

Kenneth S. Bell

KSB:ks

Enc.



Ravalli County Planning Department
215 S. 4th Street, Suite F
Hamilton, MT 59840
Phone: (406) 375-6530
Fax: (406) 375-6531
planning@ravalliacounty.mt.gov

SUBDIVISION EXEMPTION APPLICATION RAVALLI COUNTY, MONTANA

1. Applicant Information

☐ \$200 Fee

Name	
Name: Est. of Penn H. Holsapple	Consultant: Dorothy Jane Holsapple Credit Trust
Street: 210 S. 3rd/P.O.Box 210	Street: 210 S. 3rd/P.O. Box 210
City/State/Zip: Hamilton, MT 59840	City/State/Zip: Hamilton, MT 59840
Daytime Phone: 363-5064	Daytime Phone: 363-5064

To whom should the original decision letter be sent? Ken Bell, POB 210, Hamilton, MT 59840
Attorney for Co-P.R.s and Co-Trustees

2. Titleholder Information (For relocations of common boundaries, all owners must sign)

The three (3) persons signing are BOTH the Co-P.R.s and the Co-Trustees

Full Name: Haven D. Holsapple	Signature:
Full Name: Timothy G. Holsapple	Signature:
Full Name: Jeffrey B. Holsapple	Signature:
Full Name:	Signature:

3. Property Information (Include all that apply)

County Tax ID or Parcel Number: 1057900
Certificate of Survey Number: 1173 Tract/Parcel _____
Subdivision Name: _____ Tract/Parcel _____
Legal Description: Section 21 Township T5N Range R21W

4. Type of Exemption Requested (Please check all that apply)

- ☐ Relocation of Common Boundary
☐ Family Transfer
☐ Agricultural Covenant
☐ Mortgage Release
☒ Other Court-ordered split

5. Prior Use of Subdivision Exemptions (If none, leave table blank. Attach additional pages if necessary.) NONE

Tax ID/Parcel number or property information	Exemption used	Disposition of parcel (Sold, retain ownership, etc.)



Ravalli County Planning Department
215 S. 4th Street, Suite F
Hamilton, MT 59840
Phone: (406) 375-6530
Fax: (406) 375-6531
planning@ravallicounty.mt.gov

SUBDIVISION EXEMPTION APPLICATION
RAVALLI COUNTY, MONTANA

1. Applicant Information

☐ \$200 Fee

Name	
Name: Est. of Penn H. Holsapple	Consultant: Dorothy Jane Holsapple Credit Trust
Street: 210 S. 3rd/P.O.Box 210	Street: 210 S. 3rd/P.O. Box 210
City/State/Zip: Hamilton, MT 59840	City/State/Zip: Hamilton, MT 59840
Daytime Phone: 363-5064	Daytime Phone: 363-5064

To whom should the original decision letter be sent? Ken Bell, POB 210, Hamilton, MT 59840
Attorney for Co-P.R.s and Co-Trustees

2. Titleholder Information (For relocations of common boundaries, all owners must sign)
The three (3) persons signing are BOTH the Co-P.R.s and the Co-Trustees

Full Name: Haven D. Holsapple	Signature:
Full Name: Timothy G. Holsapple	Signature:
Full Name: Jeffrey B. Holsapple	Signature:
Full Name:	Signature:

3. Property Information (Include all that apply)

County Tax ID or Parcel Number: 1057900
Certificate of Survey Number: 1173 Tract/Parcel _____
Subdivision Name: _____ Tract/Parcel _____
Legal Description: Section 21 Township T5N Range R21W

4. Type of Exemption Requested (Please check all that apply)

- ☐ Relocation of Common Boundary
☐ Family Transfer
☐ Agricultural Covenant
☐ Mortgage Release
☒ Other Court-ordered split

5. Prior Use of Subdivision Exemptions (If none, leave table blank. Attach additional pages if necessary.) NONE

Tax ID/Parcel number or property information	Exemption used	Disposition of parcel (Sold, retain ownership, etc.)

Subdivision Exemption Application

6. Conflict of Interest Statement

Are there any financial, business, or personal relationships between the owner of the property, the selling agent, the purchasing agent, the brokerage firm, the developer or builder, consultants, and/or purchasers of the property and members of the Ravalli County Planning Staff and/or the Ravalli County Commissioners?

 Yes
XX No

If yes, please explain.

7. Attachments

- A. Provide an 8 ½" x 11" copy of the Certificate of Survey or plat (if a filed Certificate of Survey or plat is not available, a drawing will suffice) that clearly shows the existing boundary of the subject property(ies) and the proposed new configuration. Please represent the existing boundary with a dashed line and the new boundary with a solid line and label boundary lines as "existing" or "proposed."

Family Transfers: Identify which parcel(s) will be "gifted" and which will be the "remainder."

A plat prepared by a surveyor is not required to be submitted with this application.

- B. It is recommended that the applicant attach written responses regarding the general evasion criteria and/or any specific rebuttable presumptions that apply to his/her exemption request. Please note: If a written explanation is not provided, the applicant and/or his/her representative may be asked to respond to the criteria and rebuttable presumptions during the public meeting on this request. (See SEA Supplemental)

*****PLEASE SEE the Verified Affidavit, a copy of which is included in the papers that accompany this Application, for comments regarding the evasion criteria and the**

Signature of person filling out the form:

rebuttable presumptions.

Kenneth S. Bell

Printed name of person filling out the form:

Kenneth S. Bell

363-5064

ESTATE CF
NAME

PENN H HOLSAPPLE
PO BOX 597
HAMILTON MT 59840-0597

Account No

Date Feb 2, 2009

93-239/929
01

Pay to the Order of Ravalli County Planning Department \$ 200.00

Two hundred and 70/100 Dollars



Farmers State Bank

P.O. Box 100 Victor, MT 59875
(406) 842-3431
Florence, Darby, Stevensville, Hamilton & Lolo

For (s) Daming Dept. Subdiv

[Signature]

⑆092902394⑆

4413304⑈

1111

KENNETH S. BELL
BELL & BELL, P.C.
210 South 3rd Street
P.O. Box 210
Hamilton, MT 59840
1-406-363-5040
Fax No. 406-375-0339
Attorney for Co-Personal Representatives

FILED
DEBBIE HARMON, CLERK

FEB 25 2009

DEPUTY

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

IN THE MATTER OF THE ESTATE OF	)	Probate No. DP 08 - 36
	)	Dept. No. 1
PENN HARVEY HOLSAPPLE, a/k/a)	
PENN H. HOLSAPPLE,	)	MOTION FOR AN ORDER
	)	DIVIDING REAL PROPERTY
Deceased.)	
_____)	

COME NOW, HAVEN D. HOLSAPPLE, TIMOTHY G. HOLSAPPLE and JEFFREY B. HOLSAPPLE, Co-Personal Representatives of the above-captioned estate and Co-Trustees of the Dorothy Jane Holsapple Credit Trust U/W/D December 9, 1993, by and through their attorney, Kenneth S. Bell, and move this Court for an Order dividing real property within the estate and the trust in the manner described in the proposed plat attached hereto as Exhibit "A."

This Motion is supported by a Brief and an Affidavit. The Affidavit is Exhibit "B" to this Motion. The Brief is filed separately from, but concurrently with, this Motion.

Pursuant to §76-3-201(2), the undersigned has delivered to the Ravalli County Planning Department (at its instruction), with a copy to the Ravalli County Commissioners, a copy of this Motion, the attached Affidavit, the accompanying Brief, the preliminary Certificate of Survey and any other materials requested by the Planning Department, if any.

DATED this 24th day of February, 2009.

Kenneth S. Bell

Kenneth S. Bell
Attorney for Co-Personal Representatives
Attorney for Co-Trustees

CERTIFICATE OF MAILING

The undersigned hereby certifies that he has mailed a true and correct copy of the foregoing MOTION FOR AN ORDER DIVIDING REAL PROPERTY filed with the District Court on February 25, 2009, to the following persons, at the address shown for each below, by placing a copy of the same in the U.S. Mail at Hamilton, MT, with prepaid first-class postage affixed, on the 25th day of February, 2009.

Haven D. Holsapple
P.O. Box 595
Hamilton, MT 59840

Timothy G. Holsapple
P.O. Box 11314
Bainbridge Island, WA 98110

Jeffrey B. Holsapple
829 South Carpenter Loop
Post Falls, ID 83854

William S. Vant
P.O. Box 86
Bemus Point, NY 14712

Penn H. Holsapple, Jr.
1 Violet Court
Greenville, SC 29615

Kenneth S. Bell

CERTIFICATE OF SURVEY

PURPOSE: COURT ORDER CAUSE NO. DP 08-36

OWNERS: Haven D. Holsapple, Timothy G. Holsapple and Jeffrey B. Holsapple as co-person/representatives of the Estate of Penn H. Holsapple, deceased and Haven D. Holsapple, Timothy C. Holsapple and Jeffrey B. Holsapple, Co-Trustees of the Dorothy Jane Holsapple Credit Trust U/W/D December 9, 1993.

A PORTION OF THE SE $\frac{1}{4}$,
SECTION 21, T5N, R21W, P.M.M.,
RAVALLI COUNTY, MONTANA

LEGAL DESCRIPTION

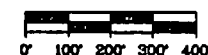
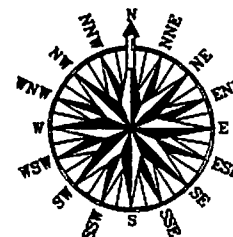
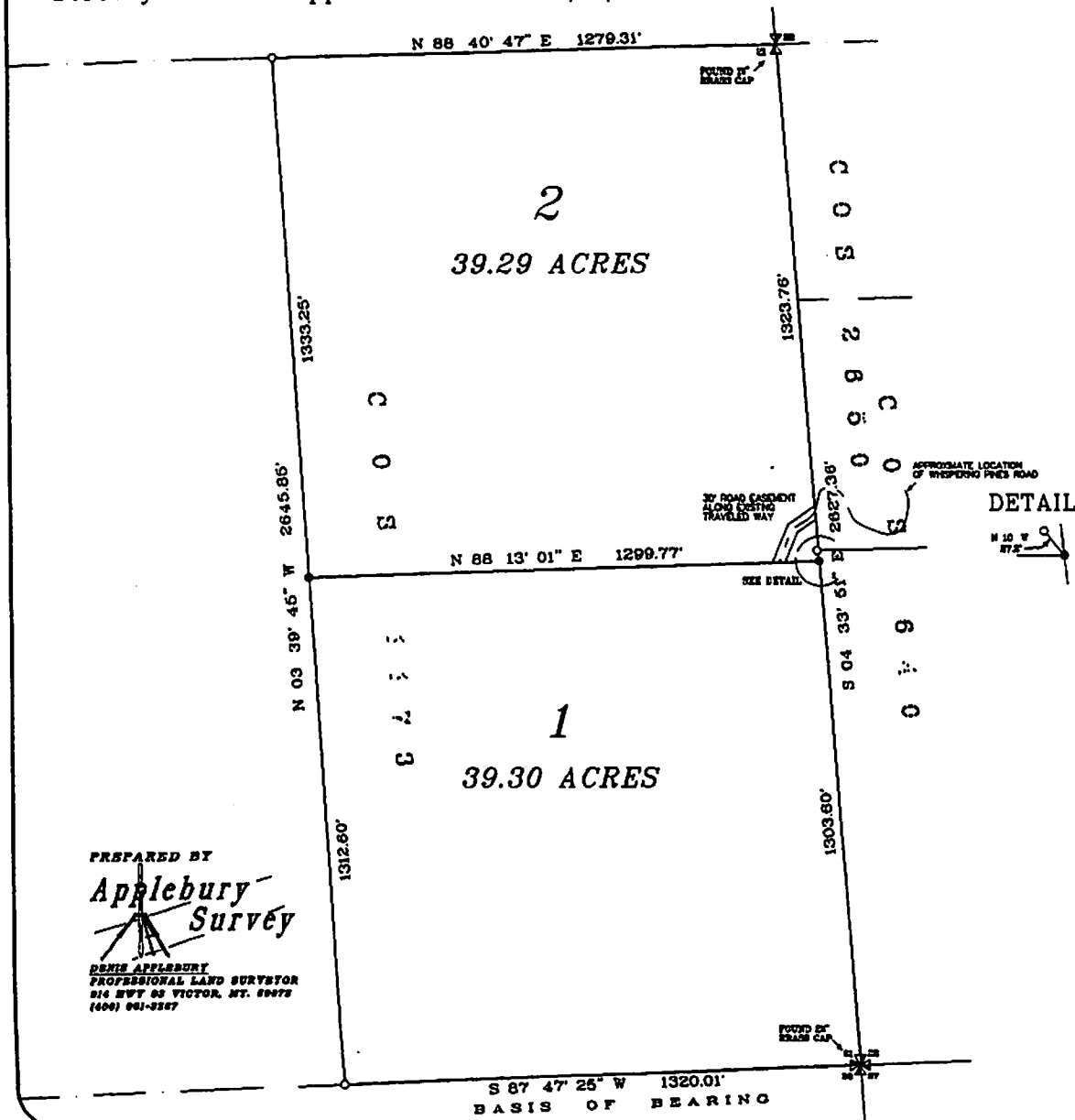
A tract of land located in and being a portion of the SE $\frac{1}{4}$, Section 21, T5N, R21W, P.M.M., Ravalli County, Montana and being more particularly described as the E1/2SE $\frac{1}{4}$ of said Section 21, containing 78.59 acres and all according to Certificate of Survey No. _____, Excepting and reserving any easements shown, also subject to all easements of record and as apparent upon the ground.

Further, that these parcels are created by order of a court of record in this state or by operation of law or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain. Therefore this survey is exempt from review pursuant to Section 76-3-201(1)(a) MCA.

CERTIFICATE OF SURVEYOR

I hereby certify that this is a true and accurate description of a survey made by me or under my supervision during the month of November, 2008.

Date _____
Denis Applebury, Professional Land Surveyor, Montana Registration No. 57015



● SET 1" REBAR WITH 1" PLASTIC CAP

○ FOUND 1" ALUMINUM CAP

1/4	SEC	T	R	CERTIFICATE OF SURVEY NO. _____ RAVALLI COUNTY, MONTANA SHEET 1 OF 1
21	5N	21W		

PREPARED BY
Applebury Survey
DENIS APPLEBURY
PROFESSIONAL LAND SURVEYOR
214 WYV OF VICTOR, MT. 59072
(406) 941-3267

EXHIBIT "A"

KENNETH S. BELL
BELL & BELL, P.C.
210 South 3rd Street
P.O. Box 210
Hamilton, MT 59840
1-406-363-5040
Fax No. 406-375-0339
Attorney for Co-Personal Representatives

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

IN THE MATTER OF THE ESTATE OF	)	Probate No. DP 08 - 36
	)	Dept. No. 1
PENN HARVEY HOLSAPPLE, a/k/a)	
PENN H. HOLSAPPLE,	)	VERIFIED AFFIDAVIT OF HAVEN D.
	)	HOLSAPPLE, TIMOTHY G. HOLSAPPLE
Deceased.	)	AND JEFFREY B. HOLSAPPLE
_____)	

COME NOW Haven D. Holsapple, Timothy G. Holsapple and Jeffrey B. Holsapple and,
upon their oaths, state as follows:

1. We are the Co-Personal Representatives of the Estate of Penn Harvey Holsapple, a/k/a Penn H. Holsapple, and we are the Co-Trustees of the Dorothy Jane Holsapple Credit Trust U/W/D December 9, 1993. The Credit Trust arose in the Will of Dorothy Jane Holsapple which was probated in this Court under Probate No. DP 99-15.

2. We are the only three (3) children of BOTH Penn Harvey Holsapple and Dorothy Jane Holsapple. We have given notice of this partition request to Penn's son from an earlier marriage, Penn H. Holsapple, Jr., and to Dorothy's son from an earlier marriage, William S. Vant, neither of whom were bequeathed any interest in the real property which is the subject of this partition.

Verified Affidavit of Haven D. Holsapple, Timothy G.
Holsapple and Jeffrey B. Holsapple

3. This Affidavit is submitted in support of the Motion for an Order Dividing Real Property to which it is attached.

4. This request is not filed to circumvent the subdivision process. Its purpose is to give effect to paragraphs SEVENTH (C) and (D) on page 9 of both our Father's and our Mother's Wills of December 9, 1993.

5. Both our Father's Will and our Mother's Will direct that the approximately 40 acres represented by Parcel 2 in the proposed Certificate of Survey (Exhibit "A" to Motion) be conveyed to Haven D. Holsapple. Parcel 1 of the proposed COS and a parcel contiguous to the southerly boundary of Parcel 1 (approximately 38.13 acres), totaling approximately 77.48 acres, are to be conveyed to the three of us in equal, undivided shares. Our parents' house and a cabin are presently located upon Parcel 1 of the proposed Certificate of Survey.

6. No one of the three of us has a financial, business or personal relationship with any member of the Ravalli County Planning Staff or with any Ravalli County Commissioner.

7. No one of the undersigned is a real estate developer, nor does any one of the undersigned have any present intent to subdivide any part of the family's property. The property has been in the Holsapple family since December of 1976 without division. The property was purchased in December of 1976 from Medicine Tree Ranches, Inc. All three of the quarter quarter sections were parts of U.S. patents granted to Henry L. Myers in June of 1896 (the parcel to be deeded to Haven D. Holsapple) and granted to Gideon S. Bailey in August of 1895 (the other two "40's").

8. When the proposed "exemption transaction" is completed, the configuration of the tracts will be unchanged. There will still be three (3) quarter quarter sections contiguous to each other and "stacked" north and south.

9. There have been no prior exempt transactions involving any of the three quarter quarter sections being addressed here. Thus, there exists no pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

10. Access to the two parcels that will result if this Court-ordered split is approved is provided by an easement dated November 12, 1976, and recorded in Book 141 of Deeds at page 895.

11. All of the Holsapple property is a part of Ravalli County Planning and Zoning District No. 12 adopted by the Board of County Commissioners on March 9, 1978. The property is now and always has been in compliance with the intent, requirements and restrictions of said District No. 12. See Permanent File No. 6390.

12. All of the Holsapple property is governed by Restrictive Covenants dated December of 1970 and recorded in Book 128 of Deeds at page 202 which were extended in a document recorded in Book 211 of Deeds at page 106. The property is now and always has been in compliance with all of the restrictions therein.

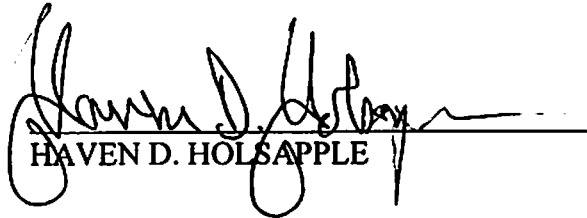
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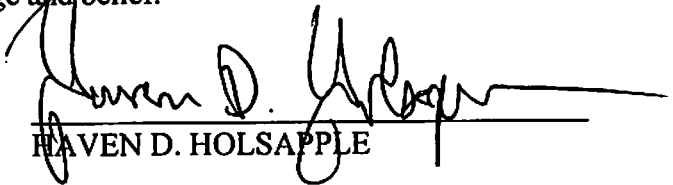
DATED this 13 day of February, 2009.


HAVEN D. HOLSAPPLE

STATE OF MONTANA)
 : ss.
County of Ravalli)

HAVEN D. HOLSAPPLE, having been duly sworn, upon his oath, deposes and says:

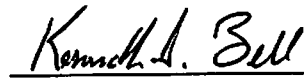
That he has read the foregoing and that the facts and matters contained therein are true, accurate, and complete to the best of his knowledge and belief.


HAVEN D. HOLSAPPLE

On this 13th day of February, 2009, before me, a Notary Public for the State of Montana, appeared HAVEN D. HOLSAPPLE, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same as a Co-Personal Representative of the Estate of Penn H. Holsapple and as a Co-Trustee of the Dorothy Jane Holsapple Credit Trust U/W/D December 9, 1993.



NOTARY PUBLIC-MONTANA
Residing at Hamilton, Montana
My Comm. Expires June 5, 2010


Kenneth S. Bell
Notary Public for the State of Montana
Residing at Hamilton, MT
My commission expires 06/05/2010

Verified Affidavit of Haven D. Holsapple, Timothy G.
Holsapple and Jeffrey B. Holsapple

DATED this 9TH day of February, 2009.

Timothy G. Holsapple
TIMOTHY G. HOLSAPPLE

STATE OF WASHINGTON)

: ss.

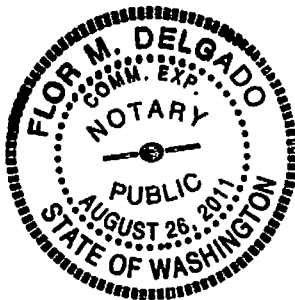
County of King)

TIMOTHY G. HOLSAPPLE, having been duly sworn, upon his oath, deposes and says:

That he has read the foregoing and that the facts and matters contained therein are true, accurate, and complete to the best of his knowledge and belief.

Timothy G. Holsapple
TIMOTHY G. HOLSAPPLE

On this 9th day of February, 2009, before me, a Notary Public for the State of Washington, appeared TIMOTHY G. HOLSAPPLE, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same as a Co-Personal Representative of the Estate of Penn H. Holsapple and as a Co-Trustee of the Dorothy Jane Holsapple Credit Trust U/W/D December 9, 1993.



Flor M. Delgado
Printed Name Flor M. Delgado
Notary Public for the State of Washington
Residing at Seattle, WA
My commission expires Aug. 26, 2011

DATED this 5th day of February, 2009.

Jeff B. Holsapple
JEFFREY B. HOLSAPPLE

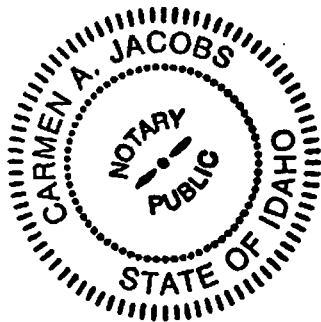
STATE OF IDAHO)
 : ss.
County of Kootenai)

JEFFREY B. HOLSAPPLE, having been duly sworn, upon his oath, deposes and says:

That he has read the foregoing and that the facts and matters contained therein are true, accurate, and complete to the best of his knowledge and belief.

Jeff B. Holsapple
JEFFREY B. HOLSAPPLE

On this 5th day of February, 2009, before me, a Notary Public for the State of Idaho, appeared JEFFREY B. HOLSAPPLE, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same as a Co-Personal Representative of the Estate of Penn H. Holsapple and as a Co-Trustee of the Dorothy Jane Holsapple Credit Trust U/W/D December 9, 1993.



Carmen A. Jacobs
Printed Name Carmen A. Jacobs
Notary Public for the State of Idaho
Residing at 1729 E. Selkirk Way, Post Falls, Id
My commission expires 12-14-2013

KENNETH S. BELL
BELL & BELL, P.C.
210 South 3rd Street
P.O. Box 210
Hamilton, MT 59840
1-406-363-5040
Fax No. 406-375-0339
Attorney for Co-Personal Representatives

FILED
DEBBIE HARMON, CLERK

FEB 25 2009

DEPUTY

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

IN THE MATTER OF THE ESTATE OF	)	Probate No. DP 08 - 36
	)	Dept. No. 1
PENN HARVEY HOLSAPPLE, a/k/a)	
PENN H. HOLSAPPLE,	)	BRIEF IN SUPPORT OF
	)	MOTION FOR AN ORDER DIVIDING
Deceased.	)	REAL PROPERTY
)	

COMES NOW Kenneth S. Bell, attorney for HAVEN D. HOLSAPPLE, TIMOTHY G. HOLSAPPLE and JEFFREY B. HOLSAPPLE, the Co-Personal Representatives of the above-captioned estate, and the Co-Trustees of the Dorothy Jane Holsapple Credit Trust U/W/D December 9, 1993, and submits this Brief in explanation and support of the Motion requesting this Court to divide real property by Order.

BACKGROUND

Penn H. Holsapple purchased approximately one hundred twenty (120) acres in Ravalli County in December of 1976, before moving to the Bitterroot Valley from New York. In 1977, Penn had Denis Applebury survey the northernmost eighty (80) acres. That Certificate of Survey No. 1173 illustrated the boundaries of the East ½ Southeast 1/4 of Section 21, T5N, R21W, Ravalli County, including 78.59 acres. That parcel has remained intact to this day. The second

parcel Penn purchased in 1976 is a 38.18 acre parcel described as the NE1/4NE1/4 of Section 28, T5N, R21W, which is contiguous to the south line of the larger parcel in Section 21. Thus, the parcels resemble three (3) “40's” stacked one upon another, with the northernmost two being one aggregate parcel of 78.59 acres, the parcel to be divided.

In December of 1993, Penn Holsapple deeded his two parcels to his wife, Dorothy Jane Holsapple, and himself as tenants in common to facilitate their new Wills. When Dorothy Holsapple passed away in October of 1998, her undivided one-half interest in the real property passed to three of her sons, Haven D. Holsapple, Timothy G. Holsapple and Jeffrey B. Holsapple, as Co-Trustees of the Dorothy Jane Holsapple Credit Trust U/W/D December 9, 1993. Until Penn’s death, Dorothy’s one-half interest was held by the trust for Penn’s benefit. At Penn’s death, the trust is to deliver Dorothy’s one-half of the property as follows:

1. “Approximately 40 acres located in Hamilton, Montana, legally described on Exhibit A attached hereto (the northernmost 39.29 acres) shall be distributed to HAVEN D. HOLSAPPLE, if he is then living.” (paragraph SEVENTH (C), page 9, Dorothy Jane Holsapple’s Last Will and Testament of December 9, 1993, on file with this Court in Probate No. 99-15 opened March 04, 1999).
2. “An undivided one-third (1/3) interest in my residence and adjacent cabin and the surrounding approximately 80 acres, located in Hamilton, Montana, and legally described on Exhibit B attached hereto, shall be distributed to each of HAVEN D. HOLSAPPLE, TIMOTHY G. HOLSLAPPLE and JEFFREY B. HOLSAPPLE, who is then living.” (Id., at paragraph SEVENTH (D), page 9).

The foregoing distribution of the real property is mirrored in Penn's Will at paragraph SEVENTH (C) and (D) on its page 9. Thus, with Penn's death, both the Estate of Penn H. Holsapple and the Dorothy Jane Holsapple Credit Trust (created by a Will probated in this Court in 1999) are now required to distribute approximately forty (40) acres to Haven Holsapple and approximately eighty (80) acres to Haven, Timothy and Jeffrey Holsapple. The impediment to doing so is that the "approximately 40 acres" that both Wills bequeath to Haven Holsapple and described in their Exhibits A is the top "40" in the stack of three 40's; the north ½ of the 78.59 acre parcel illustrated in the 1977 Certificate of Survey No. 1173; also shown as Parcel 2 in the new Certificate of Survey proposing the instant court-ordered split.

APPLICABLE LAW AND DISCUSSION

This Court's authority to issue the Order requested is found in §76-3-201(1)(a), MCA. Subsection (2) of that statute requires notice to the Ravalli County Commissioners so that they may comment in writing as to the proposed division. As set forth in the Motion, a copy of this Motion and Brief, with all attachments, was hand-delivered to the Commissioners and to the Planning Department on February ^{25 MS} ~~24~~, 2009.

The request embodied in the instant Motion is not made to avoid subdivision regulations. The purpose of the request is to enable both the Estate of Penn H. Holsapple and the Dorothy Jane Holsapple Credit Trust to give effect to both Dorothy and Penn Holsapples' Wills. Both Wills specifically devise to Haven D. Holsapple, one of the couple's sons, a parcel of "approximately 40 acres. . . ." which parcel is a part of Certificate of Survey No. 1173. Said parcel is also described as the NE1/4SE1/4, Section 21, T5N, R21W, P.M.M., Ravalli County,

Montana, and, upon the issue of the requested Order, will be described as Parcel 2, Certificate of Survey No. _____ .

The interest in the property proposed for division that resides in the Trust arose in the Will of Dorothy Jane Holsapple, who passed away as a resident of Ravalli County on October 15, 1998, and whose estate was probated in Ravalli County as Probate No. DP 99-15 on March 4, 1999. The interest of the Trust is identical to that of the estate of Penn H. Holsapple, and it is to be distributed in exactly the same way as well.

No one of the three of Haven D. Holsapple, Timothy G. Holsapple or Jeffrey B. Holsapple is a real estate developer, nor does any one of them have any present intent to subdivide any part of the family's property. No one of the three has a financial, business or personal relationship with any Ravalli County Commissioner or with any member of the Ravalli County Planning Department.

In the event that the Court orders the requested split, the smaller of the two (2) parcels will be 39.29 acres. There have been no prior "exempt transactions" invoking any of the property or persons involved here. Thus, there exists no pattern of exempt transactions that will result in the equivalent of a subdivision created without local government review. Access to both parcels is provided by a recorded easement dated November 12, 1976.

All of the Holsapple property is part of Ravalli County Planning and Zoning (Voluntary Zoning) District No. 12 adopted by the County in 1978. The property is also covered by Restrictive Covenants dated in 1970 and extended to the present. The Holsapple property is now, has always been and will remain in compliance with VZD No. 12 and the Restrictive Covenants.

There is nothing about this requested court-ordered split to which anyone may legitimately object. It is in conformance with § 76-3-201, MCA; it is submitted to give effect to two (2) Wills probated in this Court; it is not submitted to avoid subdivision regulations; there is access of record to both of the "new" parcels; the parcels will remain in compliance with Voluntary Zoning District No. 12 and applicable Restrictive Covenants; and, there have been no other "exempt transactions" involving this property at any time since Penn Holsapple purchased it in 1976.

RESPECTFULLY SUBMITTED this 24th day of February, 2009.

Kenneth S. Bell

Kenneth S. Bell
Co-Personal Representatives' Attorney

CERTIFICATE OF MAILING

The undersigned hereby certifies that he has mailed a true and correct copy of the foregoing BRIEF IN SUPPORT OF MOTION FOR AN ORDER DIVIDING REAL PROPERTY filed with the District Court on February 25, 2009, to the following persons, at the address shown for each below, by placing a copy of the same in the U.S. Mail at Hamilton, MT, with prepaid first-class postage affixed, on the 25th day of February, 2009.

Haven D. Holsapple
P.O. Box 595
Hamilton, MT 59840

Timothy G. Holsapple
P.O. Box 11314
Bainbridge Island, WA 98110

Jeffrey B. Holsapple
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Post Falls, ID 83854

William S. Vant
P.O. Box 86
Bemus Point, NY 14712

Penn H. Holsapple, Jr.
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